

REMARKS/ARGUMENTS

Claims 1 and 53 have been amended by incorporating subject matter from claims 12, 15 and 43 into them to specify the polymer and the compound capable of reducing the enthalpy of fusion of the polymer being claimed.

Claims 18, 43, 45 have been amended to conform to claim 1 as amended.

Claims 35 and 55 have been amended to correct typographical errors.

The dependency of claim 44 has been changed.

New claims 58-70 have been added.

Support for the above claim amendments and new claims exists throughout the present application, including page 61 (for amounts and types of compound capable of reducing the enthalpy of fusion of the polymer being claimed) and pages 21 and 29 (for types of polymer being claimed).

Claims 12-17, 19-25 and 36-42 have been canceled.

Claims 1-11, 18, 26-35, 43-55 and 57-70 are currently pending, although claims 8, 18 and 29-35 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek appropriate rejoinder of withdrawn claims pursuant to MPEP 821.04.

Initially, the Office Action asserted that Applicants' reference to nylon 611/dimethicone in response to the Restriction Requirement in this case constituted new matter. This is not the case. As explained in Applicants' July 2, 2008, filing, nylon 611/dimethicone is the INCI name now commonly associated with the elected type of polymer (at the time of U.S. patent 5,981,680, the INCI name did not exist). To help further

explain/demonstrate that the elected polymer is nylon 611/dimethicone, Applicants submit herewith a Rule 132 declaration prepared for submission in a co-pending application which may be helpful in this case. (See, Tab 1). As is clear from the Rule 132 declaration, the Dow Corning/U.S. patent 5,981,680 polymers in question are nylon 611/dimethicone copolymers. The variation of polymers discussed in the declaration result from degree of polymerization (DP), not the structure of the polymer *per se* -- all of the polymers are nylon 611/dimethicone polymers. In this particular application, the nylon 611/dimethicone polymer in the examples has a degree of polymerization of 45. New claims 68-70 are more specifically directed to such polymers. Applicants respectfully submit that this explanation should sufficiently answer any questions which may have existed concerning the elected polymer.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, first paragraph, based on the assertion that the claims are somehow directed to new matter.

The Office Action also rejected the pending claims under 35 U.S.C. §103 as obvious over U.S. patent 6,033,650 ("Calello") in view of U.S. patent 5,981,680 ("Petroff"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The present invention relates to the combination of a specific type of polymer (exemplified by nylon 611/dimethicone polymers) and a specific type of agent (linear or a branched aliphatic monoalcohol having more than 8 carbon atoms). As demonstrated in the examples of the present application, this combination yields compositions having improved cosmetic properties including improved deposition of materials onto keratinous materials

such as skin. Nothing in the applied art would have led one of ordinary skill in the art to this specific, unique combination of elements, or to any of the benefits associated with this combination.

Calello, the primary reference, exemplifies compositions containing 0.5% of a product containing “octyldodecanol/trilaurin/phospholipid/cholesterol/glycosphingolipid.” The inclusion of this product in Calello’s compositions does not teach or suggest including octyldodecanol into a composition for any particular reason, let alone combining it in the specified amounts with the specified polymer as required by the present invention.

Although Calello does not identify the product which he used in his compositions, the product appears to be a Sphingoceryl® product (see, Tabs 2 and 3). Such products are generally included in compositions as active agents owing to the presence of phospholipid/cholesterol/glycosphingolipid in the product. (See, Tab 3). Thus, Calello’s inclusion of this product as an active agent in his compositions would teach or suggest nothing about the importance of including octyldodecanol into compositions. Stated another way, Calello does not recognize that the presence of an aliphatic alcohol such as octyldodecanol is a result effective variable which could affect the physical properties of the composition to which it was added.

With particular reference to pending claims 25, 45 and 59-65, nothing in Calello would have motivated one of ordinary skill in the art to include such result effective amounts of an aliphatic alcohol into compositions because Calello neither teaches, suggests, nor recognizes the result effective nature of such compounds. This is particularly true given that

because octyldodecanol was part of a product added to Calello's compositions, these compositions necessarily contained less than 0.5% octyldodecanol.

The fact that Calello does not teach, suggest or recognize the result effective nature of the required aliphatic alcohol, combined with the fact that Calello neither teaches nor suggests the claimed polymers, leads to the clear conclusion that Calello could not possibly lead to the unique combination of elements required by the present invention.

Petroff, which merely discloses the claimed polymers, cannot compensate for Calello's glaring deficiencies -- Petroff does not teach, suggest or recognize the result effective nature of the required aliphatic alcohol, so the combination of the applied references could not lead to the invention compositions.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103.

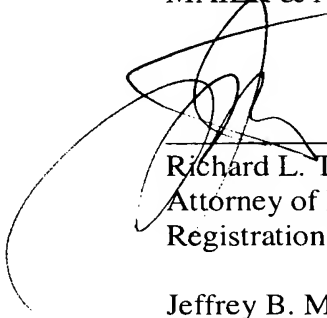
The Office Action also issued several double patenting rejections. However, none of the applications/patents in these rejections would have led one of ordinary skill in the art to the invention compositions having the required polymer and the required amounts of the required aliphatic alcohol. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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